

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NO: 96-01737

OCT 28 1997

[REDACTED]
[REDACTED]
COUNS [REDACTED]

HEARING DESIRED: Yes

Applicant requests that his records be corrected to show that he was not denied reenlistment; he was not discharged; he served continuously to the present; he is entitled to back pay, benefits, and credit; and he is eligible to reenlist. Applicant's submission is at Exhibit A.

The appropriate Air Force office evaluated applicant's request and provided an advisory opinion to the Board recommending the application be denied (Exhibit C). The advisory opinion was forwarded to the applicant for review and response (Exhibit D). Applicant's counsel's response is attached at Exhibit E.

The application was timely filed.

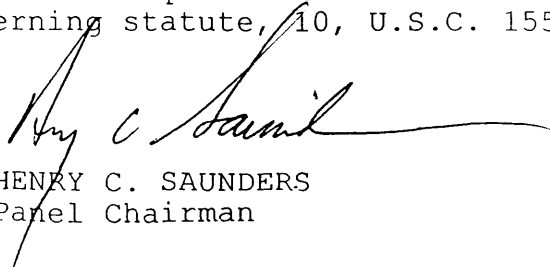
After careful consideration of applicant's request and the available evidence of record, we find insufficient evidence of error or injustice to warrant corrective action. The facts and opinions stated in the advisory opinion appear to be based on the evidence of record and have not been adequately rebutted by applicant's counsel. Absent persuasive evidence applicant was denied rights to which entitled, appropriate regulations were not followed, or appropriate standards were not applied, we find no basis to disturb the existing record.

Accordingly, applicant's request is denied.

The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

The Board staff is directed to inform applicant of this decision. Applicant should also be informed that this decision is final and will only be reconsidered upon the presentation of new relevant evidence which was not reasonably available at the time the application was filed.

Members of the Board Mr. Henry C. Saunders, Mr. Joseph T. Wagner, and Mr. Richard A. Peterson, considered this application on 16 October 1997, in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10, U.S.C. 1552.


HENRY C. SAUNDERS
Panel Chairman

Exhibits:

- A. Applicant's DD Form 149
- B. Available Master Personnel Records
- C. Advisory Opinions
- D. AFBCMR Ltr Forwarding Advisory Opinions
- E. Applicant's Response



DEPARTMENT OF THE AIR FORCE
AIR NATIONAL GUARD READINESS CENTER



MEMORANDUM FOR AFBCMR

16 APR 1997

FROM: ANG/MPPU
3500 Fetchet Avenue
Andrews AFB MD 20762-5157

SUBJECT: Application for Correction of Military Records—[REDACTED]
[REDACTED]

The attached Application for Correction of Military Records submitted by [REDACTED] a former member of the New York Air National Guard (NY ANG), is forwarded for your review and action.

[REDACTED] requests his records be changed to reflect that he was not discharged and denied reenlistment. [REDACTED] also requests all back pay, allowances, and eligibility to reenlist.

This Headquarters recommends denial of relief. [REDACTED] asserts he was wrongfully discharged from the NY ANG on 8 Oct 94. He claims he was discharged in reprisal for his earlier activities as union steward and for successfully defending against a thirty-day suspension from duty in his technician status. He requests correction of his records to show that he was not discharged and that he is eligible for reenlistment. He further asked for reinstatement in the NYANG with accompanying back pay and points for the length of time he was out of the NY ANG.

Our review does not support [REDACTED] allegation that his discharge and denial of reenlistment were wrongful. [REDACTED] was discharged from the NY ANG and denied reenlistment based on a series of minor infractions beginning in 1990 and extending through 1994. These acts included violating ANG instructions on uniform wear, failing to go to work on time on numerous occasions, and other acts of dereliction of duty. On four occasions, [REDACTED] was out of uniform. The record contains evidence of several failures to go to work on time, including three occasions after he was recommended for reenlistment. On three occasions, he was derelict in the performance of his duties. [REDACTED] left work early once during an exercise. He also committed other minor infractions such as taking an unauthorized coffee break, failing to use a sign out board to let others know his whereabouts, and for failing to follow the chain of command concerning personal matters. On most of these occasions, [REDACTED] received nothing more than a verbal counseling. However, he received a letter of admonition for failing to go to

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required M-16 training and a letter of reprimand for one incident of dereliction of duty. All of these incidents concerned his military performance. We believe, when taken together, they form a legally sufficient basis for discharging [REDACTED] for unsuitability for further military service. We also note the New York Inspector General's office reviewed the discharge and denial of reenlistment of [REDACTED] and concluded he was afforded all due process required.

Assuming that the AFBCMR wants to grant [REDACTED] request, it should be informed that it appears [REDACTED] has been granted some relief. Among the records provided to this reviewer was a NGB Form 22a. That form, dated 14 Dec 95, purports to correct Block 26 of [REDACTED] original NGB Form 22, *Record of Separation and Record of Service* to read as "eligible." The original NGB Form 22 is lacking from the file, but we assume from a reading of this form that [REDACTED] is eligible to reenlist in the NYANG.

Questions should be directed to MSgt Gowdy, ANG/MPPUR, DSN 278-7500, or E-mail: tgowdy@angrc.af.mil.

FOR THE COMMANDER



NILDA E. URRUTIA, Lt Col, USAF
Chief, Utilization

[REDACTED]

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